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Smart Growth and Schools: Legal Hurdles and Legal Solutions for Community-Scale Schools

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"Our current policies encourage the construction of massive, isolated schools that are inaccessible to the communities they serve . . . . In addition to depriving many students of a quality education, these remotely sited mega schools also accelerate developmental sprawl into our rural areas—and what comes with it—increased car trips, lengthened bus routes, and a disappearing countryside."

—Governor Mark Sanford[1]

I. INTRODUCTION

Kokomo, Indiana hardly conjures up an image of one of the frontlines in today's battle against unsustainable growth patterns. Yet, in November of 1997, that is precisely what it was. Faced with near certain demolition, the prospect of saving Kokomo's 1914-era high school seemed unlikely based on the school board's estimate that it would cost at least twenty million dollars to renovate the building and bring it into compliance with current safety codes.[2] However, when pressed on the issue, the school board was unable to offer any written evidence in support of this estimate or its additional claim that this historic school was structurally unsafe for students.[3] Instead, through the persistent work of community leaders, it soon became clear that the building could indeed be renovated into a safe academic structure and it could be done for less than five million dollars.[4]

1. Mark Sanford, Gov., State of S.C., State of the State Address 21 (2003), *available at* http://www.scgovernor.com/uploads/upload/StateoftheStateAddress-2003.pdf (on file with the *McGeorge Law Review*).

2. CONSTANCE E. BEAUMONT & ELIZABETH G. PIANCA, NAT'L TRUST FOR HISTORIC PRES., WHY JOHNNY CAN'T WALK TO SCHOOL: HISTORIC NEIGHBORHOOD SCHOOLS IN THE AGE OF SPRAWL 33 (2d ed. 2002).

3. *Id.*

4. *Id.* at 34.

Armed with this information, the school board reversed course and, rather than building a costly new school, it renovated and adaptively reused former Kokomo high school as a middle school that, today, blends historic character and modern technology into a community-scale school.[5]

Unfortunately, the challenges that Kokomo faced are hardly an aberration. Rather, as with other aspects of our built environment, many of today's new schools are increasingly sprawl-oriented.[6] The result is a strong tendency toward building new schools that are frequently large in structure, isolated in location, and ineffective in results.[7] Indeed, "[o]ver the past several decades, investments in educational facilities have often followed the model of most real estate development—building new schools at the edge of communities on large, undeveloped parcels of land."[8]

The genesis of this trend can be traced to a variety of laws and regulations that, although not always specifically intended to, effectively prevent the building of sustainable, neighborhood-based schools.[9] Unfortunately, this effect continues to thrive, despite the fact that an increasing number of studies have established the numerous benefits of small, community schools.[10] These benefits include the health and safety of the student and the health and safety of the community itself.[11] Worse still, objective evidence is increasingly debunking the very rationale behind the laws that prioritize large, isolated schools—namely, the myth that efficiencies of scale for large, peripheral schools benefit the student and the school district.[12]

This article will do three things. First, it will explain why small, community schools provide a greater overall benefit than the current dominant type of large, isolated schools.[13] Second, the article will identify laws and regulations that often prevent the building of small, community schools and foster the proliferation of large, isolated schools.[14] Finally, the article will present legal solutions aimed at reversing this unsustainable trend and avoiding the financially and socially crippling effects of super-sized, sprawl schools.[15]

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5. *Id.*
6. *See infra* Part II.
7. *Id.*
8. Council of Educ. Facility Planners Int'l, U.S. Envtl. Prot. Agency, Schools for Successful Communities: An Element of Smart Growth 8 (2004) [hereinafter Schools for Successful Communities].
9. *See infra* Part II.
10. *See infra* Part II.A.
11. *Id.*
12. *Id.*
13. *Id.*
14. *See infra* Part III.
15. *See infra* Part IV.

II. UNSUSTAINABLE SCHOOLS—HOW WE ENDED UP WHERE WE ARE

Schools in the United States have not always been large in scale. Indeed, smaller sized schools can be traced back to when single-room schoolhouses were the dominant type of school.[16] However, in those times, small schools existed not necessarily because of their sustainable results, but because that was all that was needed to house the small school population of that time. In the 1890s, only six percent of high school-aged students actually attended school.[17] Clearly this level of low school attendance did not represent a desirable result.

Fortunately, society began to prioritize the importance of school attendance; by 1930, the number of eligible high school students attending school increased to fifty percent and the number eventually increased to today's total of over ninety percent.[18] Ironically, while this increase in the number of students attending school surely was a good thing, it also caused a major problem: namely, the more children attending school, the more school space needed to educate them.

Moreover, the significant increase in school attendance unfortunately also coincided with the rapid proliferation of unsustainable growth patterns in the United States.[19] This pattern, commonly called "sprawl," began in the early 1900s when a cabal of federal, state, and local laws and judicial opinions began to prioritize (if not mandate) growth patterns that emphasized single, separated land uses centered around low-density platting.[20] As this low-density, separated, single-use development model became the dominant growth pattern for residential and commercial projects, it soon also became the dominant growth pattern for schools.[21]

The social forces driving communities away from small, community schools were numerous and varied, including some seemingly obscure reasons such as the Soviet Union's 1957 Sputnik launch (because it allegedly demonstrated science and math deficiencies caused by small schools in the United States) and

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16. For a detailed survey of one room schoolhouses, see The One-Room Schoolhouse Center, http://www2.johnstown.k12.oh.us/cornell/ (last visited July 26, 2006) (on file with the *McGeorge Law Review*).

17. Larry Cuban, The Big Picture About Small High Schools (transcript on file with author).

18. *Id.*

19. SCHOOLS FOR SUCCESSFUL COMMUNITIES, *supra* note 8, at 8.

20. *See* DOLORES HAYDEN, BUILDING SUBURBIA: GREEN FIELDS AND URBAN GROWTH 1820-2000 46 (2003). In addition to an adverse regulatory environment, one commentator notes that the sprawl is also instigated by a "powerful lobby" comprised of architects, builders, and consultants that successfully advocate a school growth agenda that prioritizes the building of large, new schools. *See* Neal Peirce, *Galaxy of New Supporters for Champions of Old Schools*, NAT'L ACAD. OF PUB. ADMIN., Sept. 2, 2001, http://www.napawash.org/resources/ peirce/peirce_9_2_01.html (on file with the *McGeorge Law Review*).

21. DAVID SALVESEN & PHILIP HERVEY, CTR. FOR URBAN & REG'L STUDIES, UNIV. OF N.C. AT CHAPEL HILL, GOOD SCHOOLS-GOOD NEIGHBORHOODS: THE IMPACTS OF STATE AND LOCAL SCHOOL BOARD POLICIES ON THE DESIGN AND LOCATION OF SCHOOLS IN NORTH CAROLINA 4 (2003), *available at* http://curs.unc.edu/curs-pdf-downloads/Publications/goodschoolsreport2.pdf (on file with the *McGeorge Law Review*). "The low densities of the suburbs often means that relatively few kids live within walking distance of a school. Instead, most arrive by bus or car." *Id.*

the rapid 1950s growth of the nation's interstate system (which expanded the geographic areas of schools by making longer travel distances possible).[22] As these factors and others took hold, sprawl-oriented results began to surface: "Since World War II, the number of schools declined 70 percent while the average size grew fivefold . . . ."[23] From the 1940s to the 1990s, schools in the United States realized an average increase from 127 to 653 students per school.[24]

Not surprisingly, these trends have presented fundamental hurdles to effective educational efforts since "building shopping mall-sized schools outside town alienates students, encourages sprawl, and impairs our sense of community."[25] In fact, these days, some schools have even crossed the 100-acre threshold in total size[26]—an amazing figure when one considers that traditional neighborhood developments themselves are often limited to eighty acres or less.[27] Further adding to the challenge is the fact that the number of children attending schools will increase from fifty-three million today to roughly sixty million by 2030.[28]

Combine these figures with the fact that states and local school boards currently have plans to spend literally billions of dollars building schools[29] and it is easy to see how the trend of unsustainable sprawl school growth could fundamentally undermine the education system in the United States, unless laws are changed and regulations are revamped. Indeed, as one commentator has

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22. BARBARA KENT LAWRENCE ET AL., DOLLARS & SENSE: THE COST EFFECTIVENESS OF SMALL SCHOOLS 2 (2002), *available at* http://www.kwfdn.org/schools_communities/policy/resources/ (on file with the *McGeorge Law Review*). One of the leading proponents of larger schools was Bryant Conant, former Harvard University President, whose 1958 book, *The American High School Today*, argued for larger schools because he believed that they would allow schools in the United States to offer higher quality math and science courses. *See* J.B. CONANT, THE AMERICAN HIGH SCHOOL TODAY 2-6 (1959).

23. ENVTL. PROT. AGENCY, TRAVEL AND ENVIRONMENTAL IMPLICATIONS OF SCHOOL SITING 3-4 (2003), *available at* http://www.epa.gov/dced/school_travel.htm (on file with the *McGeorge Law Review*).

24. Roger Ehrich, *The Impact of School Size*, http://pixel.cs.vt.edu/edu/size.html (last visited on Sept. 26, 2006) (on file with the *McGeorge Law Review*). For a summary of related statistical information, *see* LAWRENCE ET AL., *supra* note 22, at 3-4.

25. *See* Press Release, Nat'l Trust for Historic Pres., Why Johnny Can't Walk to School, http://www.nationaltrust.org/news/docs/20001116_johnny_cantwalk.html (quoting Richard Moe, President of the National Trust for Historic Preservation) (last visited Apr. 9, 2006) (on file with author).

26. SALVESEN & HERVEY, *supra* note 21, at iii. Not to be outdone, the school district for Spartanburg, South Carolina purchased a 200 acre site for a new 2,600 student "super-school." LAWRENCE ET AL., *supra* note 22, at 12.

27. SmartCode Annotated v8.0 § 3.3.2, *available at* http://www.placemakers.com (last visited Apr. 9, 2006) (on file with the *McGeorge Law Review*).

28. U.S. DEP'T OF EDUC., NAT'L CTR. FOR EDUC. STATISTICS, A BACK TO SCHOOL SPECIAL REPORT ON THE BABY BOOM ECHO: GROWING PAINS 1-3 (2000) (on file with the *McGeorge Law Review*).

29. *See also* Peirce, *supra* note 20. Indeed, states like Ohio and New Jersey have building plans amounting to twenty-three billion dollars and twelve billion dollars respectively, and the National Education Association estimates the overall amount of money needed for school building exceeds 320 billion dollars. *Id.* Another concerning statistic is the fact that from 1940 to 1990, elementary and secondary schools decreased in number from 200,000 to 62,000 while the population rose dramatically during the same time. Local Gov't Comm'n, Schs., www.lgc.org/transportation/schools/html (last visited July 27, 2006) (on file with the *McGeorge Law Review*).

noted, "[a]s with roads, shopping malls and sprawling large-lot subdivisions, bigger is not better" when it comes to the development of schools.[30]

Fortunately though, there is hope, led by a series of proposed regulatory changes that could reverse this trend and institute a school growth model that is both community-oriented and student-centered. These proposed laws are driven by the increasing number of benefits associated with sustainable schools.

A. *The Benefits of "Smart Growth" Schools*

Before exploring the benefits of a "smart growth" school, one should establish a definition for such a school. According to a recent report by the United States Environmental Protection Agency, Smart Growth America, and the National Trust for Historic Preservation, a smart growth school has the following characteristics: it encourages community involvement, allows students to walk or bike to school, acts as a neighborhood anchor, supports community use of school facilities, fits in well with a neighborhood, makes good use of existing resources, such as historic school buildings, and is small in size.[31]

The sum total of these features is really quite straightforward: a school, situated on a small size parcel of land, within or adjacent to an existing neighborhood where many students have the option of walking or biking to school and where the local community can also use the facilities when school is not in session.[32] The importance of such a model is demonstrated by an increasing number of studies that have quantified the positives of "smart growth" schools—ranging from student-specific advantages to community-wide benefits.

Significantly though, merely locating a school near housing does not create a community-scale school. Indeed, location means little if the quality of the route for biking or walking to school is substandard. In fact, a study by the United States Environmental Protection Agency concluded that students are unlikely to utilize "[a] poor walking environment" even if a school and neighborhoods are in close proximity.[33] Thus, to qualify as a walkable, community school, the route to the school itself must be safe, comfortable, and interesting for students to walk or bike. Essentially, the environment should include pedestrian-oriented features, such as a mixture of uses, short block lengths, and quality streetscaping.[34]

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30. Michael Garber et al., *Scale & Care: Charter Schools and New Urbanism*, Apr. 1998, at 2, *available at* http://www.eric.ed.gov/ERICDocs/data/ericdocs2/content_storage_01/0000000b/80/10/a3/68.pdf (on file with the *McGeorge Law Review*).

31. TRUST FOR HISTORIC PRES., U.S. ENVTL. PROT. AGENCY & SMART GROWTH AM., SMART GROWTH SCHOOLS, *available at* http://www.nationaltrust.org/issues/schools/schools_smartgrowth_ppt.pdf (last visited Apr. 9, 2006) (on file with the *McGeorge Law Review*).

32. In fact, one effort has taken the step of actually designing prototypical version of school facilities that can fit within a community-scale at a reasonable square foot per student and has the capacity to be expanded. *See* Garber et al., *supra* note 30, at 11-13.

33. *See* TRAVEL AND ENVIRONMENTAL IMPLICATIONS OF SCHOOL SITING, *supra* note 23, at 3.

34. *Id.* at 5.

Another important concept in discussing smart growth schools involves the "scale" of a school. The scale of a school consists of its overall size—both physically and in terms of student population—in comparison to the surrounding community: "Years of research and experience have shown that children, as all humans, are most successful in environments scaled to their needs—small schools where there are strong ties to their homes, and where they can enjoy a connection to the larger community."[35]

When properly scaled, a school can be an efficient resource, but when improperly scaled, a school can become an inefficient economic and social drain on the community.[36] The fact that large schools do not necessarily provide for an improved economy of scale when compared to small schools should hardly be surprising though since "[e]conomy of scale, though useful for the production model, is inappropriate for the needs of a school."[37] After all, effectively educating children hardly comports to a systematic "assembly line" approach where the primary goal is to provide a uniform commodity as cheaply as possible. The end result is that, when a school is developed on a community-scale, as opposed to a production-scale, both the student and the community can realize a variety of benefits. The following subsection examines some of the leading examples.

1. Student Health Benefits

As recently as 1969, roughly forty-eight percent of non-driving age students walked or biked to school.[38] Yet, as of 2001, less than fifteen percent of non-driving age students walked to school and only one percent biked.[39] Obviously, this precipitous drop means that fewer and fewer students are engaging in physical activity to get to school. This leads to a scenario where "[s]tudents reach the facility by bus in the morning, stay within the confines of the school through the day, and then return by bus at the end of the day" and the only real deviation from this pattern is when the student's parent and the family vehicle displace the bus driver and the school bus in the equation.[40]

When schools are community-based, they provide a viable option for students to walk or ride bicycles to school. This results in students realizing the health benefits of physical activity.[41] In addition, the reduction of vehicular travel

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35. Garber et al., *supra* note 30.

36. *Id.* at 2.

37. *Id.*

38. FED. HIGHWAY ADMIN., NATIONWIDE PERSONAL TRANSPORTATION STUDY, REPORT NO. 4: TRANSPORTATION CHARACTERISTICS OF SCHOOL CHILDREN tbl.1 (1972) (on file with author).

39. BUREAU OF TRANSP. STATISTICS, NATIONAL HOUSEHOLD TRAVEL SURVEY, CD-ROM, Version 1.0 (Jan. 2003) (on file with author).

40. Garber et al., *supra* note 30, at 10.

41. U.S. CTRS. FOR DISEASE CONTROL & PREVENTION, MORBIDITY AND MORTALITY WEEKLY REPORT: BARRIERS TO CHILDREN WALKING AND BICYCLING TO SCHOOL-UNITED STATES 701-04 (1999) (on file with

reduces auto emissions and air populations—two factors that can exacerbate asthma in school-aged children.[42]

2. *Fiscal Benefits*

By reexamining how school districts calculate these costs, recent studies have also debunked the conventional wisdom that small schools cost more to operate.[43] Typically, the expense of educating students has been calculated on a "per student" basis.[44] This means school districts equate a school's costs by dividing its total expenses by the total number of students. However, this formula does not accurately measure a school's success because it includes in the equation the cost of students who drop out of school. In other words, the "per student" approach fails to distinguish between academic successes and academic failures when calculating the overall cost effectiveness of a school.

To better measure the cost effectiveness of a school, one study argues that the proper equation should also incorporate a quantified measure of academic success.[45] This is accomplished by measuring a school's cost "per graduate" rather than simply the cost "per student."[46] By using this formula, schools that fail to manage academic results and overall costs are not rewarded simply on volume. And, significantly, if calculated under this approach, studies reveal that small schools are actually more efficient to operate, as their costs "per graduate" are equal and sometimes less than those of large schools.[47]

In addition to reconsidering how costs are calculated so as to most accurately discern the fiscal comparisons between community-scale schools and large schools, there is other evidence that demonstrates that community-scale schools inure better fiscal benefits than large, sprawling schools. For example, as gasoline and other transportation costs rise, it is a sobering fact to realize that a typical school day in this country finds nearly 400,000 school buses traveling in excess of twenty million miles.[48] This not only results in some schoolchildren

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the *McGeorge Law Review*). Fortunately, this has spurred numerous public and private efforts to increase the walkability and bikeability of schools. For a survey of such efforts, see SCHOOLS FOR SUCCESSFUL COMMUNITIES, *supra* note 8, at 14.

42. NAT'L TRUST FOR HISTORIC PRES., SMART GROWTH SCHOOLS: A FACT SHEET 2, *available at* http://www.nationaltrust.org/issues/schools/schools_smartgrowth_facts.pdf (last visited Apr. 9, 2006) (on file with the *McGeorge Law Review*). In general, the United States Center for Disease Control notes that the percentage of overweight children in the United States has increased over sixty percent in the last thirty years. *See* BEAUMONT & PIANCA, *supra* note 2, at 14. While all of this gain cannot be attributed exclusively to sprawl schools, the fact that these type of schools inherently reduce student physical activity certainly provides a contributing factor. *Id.*

43. LAWRENCE ET AL., *supra* note 22, at 11.

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. Stacy Mitchell, *Jack and the Giant School*, NEW RULES PROJECT, 2000, http://www.newrules.

spending upwards of three hours per day on the bus, but also leads to heavy fuel and maintenance expenses for the school district.[49]

One report notes that school transportation costs have not only increased each year since 1929, but, in just the last three decades, they have doubled to roughly $10.4 billion.[50] Significantly, "[t]his growth exceeds the rate of increase in student population, indicating that per pupil transportation costs (as well as the total cost) are rising."[51] Small schools can help reverse this unsustainable trend, as evidenced by one study from Oregon, which concluded that neighborhood schools could realize a savings of up to thirty-two percent on transportation costs when compared to schools situated on the periphery of a community.[52]

Finally, another fiscal benefit of community-scale schools is that they maintain an efficient operational cost model. Indeed, as one report notes, operational costs per capita increase exponentially when the number of students attending a particular school exceeds a range of 500 to 999 total students.[53] Smaller schools are also a better value in terms of construction costs. As one study notes, "the smaller of the reasonably sized schools are less expensive to build than the larger schools, looking either at cost per square foot or at cost per student: $105 versus $120 (cost per square foot), and $16,283 versus $17,618 (cost per student)."[54]

Thus, studies continue to reveal that community-scale schools often realize greater fiscal benefits than large, mega-schools because of factors ranging from reduced construction costs to more efficient operational costs.

3. Environmental Benefits

Communities can also realize several types of environmental benefits through small schools. For example, by locating schools within residential areas, more children can walk or bike to school which, in turn, reduces the number of automobile trips.[55] The benefit is then realized because fewer automobile trips reduce the amount of overall auto emissions.[56] One study by the Environmental Protection Agency concluded that siting schools within communities could

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org/journal/nrsum00schools.htm (on file with *McGeorge Law Review*).

49. *Id.*

50. LAWRENCE ET AL., *supra* note 22, at 13.

51. *Id.*

52. EVANS & ASSOCS., BEND-LAPINE SCHOOL DISTRICT SITING STUDY (Aug. 1997) (on file with author).

53. Garber et al., *supra* note 30, at 2. (referencing EXXON EDUC. FOUND., SMALL SCHOOLS AND OPERATING COSTS (1992)).

54. LAWRENCE ET AL., *supra* note 22, at 19. It must be noted that these figures apply not to the smallest of schools but to what the report classifies as the smaller end of "reasonably sized" schools that are defined as high schools with upper limits of 1,000 students, middle schools with upper limits of 750 students, and elementary schools with upper limits of 500 students. *Id.*

55. TRAVEL AND ENVIRONMENTAL IMPLICATIONS OF SCHOOL SITING, *supra* note 23, at 25.

56. *Id.* at 1.

reduce auto emissions by fifteen percent.[57]

Another environmental benefit of renovating small schools, or building new schools within a community-scale context, is that doing so generally reduces the amount of impervious surfaces.[58] The benefit realized by limiting the amount of impervious surfaces is a decrease in runoff water and the various contaminants it often carries.[59]

Renovating existing schools or building new community-scale schools also preserves undeveloped land and uses fewer materials than large-sized schools:

> Less raw material is usually used in renovated facilities than in newly constructed schools, reducing the budget and the impact on the environment. A renovation can reuse many of the elements of the existing building, such as concrete footings, foundations, floors, and walls; structural steel walls, floors, and roofs; window and door frames; and main distribution lines for electricity, water, gas, and sewer lines.[60]

Even in those cases where an existing school structure is beyond repair, school districts can still realize similar benefits by engaging in an adaptive reuse program where other non-academic existing buildings in the community are renovated into schools.[61] Examples of these types of structures range from office buildings to retail structures, such as the former Maryvale Mall in Phoenix, Arizona, which was renovated into a new school with much of the original structure being adaptively reused for the project.[62]

4. Academic Benefits

Obviously, the academic results of students are a crucial barometer of a school's success. In the case of community-scale schools, the academic results are generally superior to large-sized schools. Many studies demonstrate the academic benefits realized by attendees of small schools, including[63] higher grade

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57. *Id.* "We conclude that compared to our sample from existing schools, neighborhood schools would reduce traffic, produce a 13% increase in walking and biking and a reduction of at least 15% in emissions of concern." *Id.* at 26.

58. SCHOOLS FOR SUCCESSFUL COMMUNITIES, *supra* note 8, at 21.

59. *Id.*

60. *Id.* at 22.

61. *Id.* at 20.

62. STEPHEN SPECTOR, NAT'L CLEARINGHOUSE FOR EDUC. FACILITIES, CREATING SCHOOLS AND STRENGTHENING COMMUNITIES THROUGH ADAPTIVE REUSE 3 (2003), *available at* http://www.edfacilities.org/pubs/adaptiveuse.pdf (on file with the *McGeorge Law Review*).

63. MARTIN BLANK, COAL. FOR CMTY. SCHOOLS, MAKING THE DIFFERENCE: RESEARCH AND PRACTICE IN COMMUNITY SCHOOLS 19-20 (2003), *available at* http://communityschools.org/CCSFullReport.pdf (on file with the *McGeorge Law Review*).

point averages, higher graduation rates, lower drop-out rates, and more graduates who attend college.[64]

5. Safety Benefits

Students attending community-scale schools also realize safety benefits as studies demonstrate that there is generally less violence and less vandalism in community-scale schools.[65] Schools with less than 300 students report fewer physical attacks with or without weapons, rapes and other sexual batteries, thefts, larcenies, robberies, and incidents of vandalism.[66] While this is not to say that all of these types of crimes proliferate at all large schools, the statistics nevertheless reveal that small schools are generally safer.

6. Community Benefits

In addition to individual students benefiting from smaller-scale schools, the community as a whole also benefits in two major ways: increased social benefits and increased community resources.

a. Increased Social Benefits

When compared to small schools, the social costs of attending large schools are alarming. Most of these costs are based upon the fact that student dropout rates are significantly higher at large schools than small schools.[67] In turn, when compared to students who graduate, students who drop out of school are more likely to require public assistance,[68] to earn less and have more difficulty finding a job,[69] and to be arrested and serve prison time[70]

The combined effect of these costs clearly damages both the individual student and the community in general. If prioritizing small, community-scale schools leads to a reduction in dropout rates, then it stands to reason that the negative social effects attributable to school dropout rates will also decrease with such a re-ordering of priorities.

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64. LAWRENCE ET AL., *supra* note 22, at 8-9.

65. U.S. DEP'T OF EDUC., VIOLENCE AND DISCIPLINE PROBLEMS IN U.S. PUBLIC SCHOOLS: 1996-1997 26, 39-57 (1999), *available at* http://nces.ed.gov/pubs98/98030.pdf (on file with the *McGeorge Law Review*).

66. *Id.*

67. LAWRENCE ET AL., *supra* note 22, 12.

68. *Id.* at 12.

69. U.S. DEP'T OF EDUC., THE CONDITION OF EDUCATION 1 (1999) (on file with author).

70. COALITION FOR JUVENILE JUSTICE, 2001 ANNUAL REPORT: ABANDONED IN THE BACK ROW: NEW LESSONS IN EDUCATION AND DELINQUENCY PREVENTION 10 (2001) (on file with author).

b. *Increased Community Resources*

A community-scale school also provides the benefit of serving as a community-wide resource, especially in terms of the school facility itself.[71] For example, one Minneapolis, Minnesota facility doubles both as a school and an after-hours community center.[72] Other multi-use school facilities include Jose Marti Middle School in Union City, New Jersey, which maintains a health center and library available for community-wide use after school hours and Anastasia Elementary School in Long Branch, New Jersey, where the media center, cafeteria, and gymnasium were all designed for dual use.[73]

The costs affiliated with dual-use schools can be spread among the various dual-use groups, rather than borne entirely by the school district. Indeed, with one study concluding that one-third of most schools' construction costs are attributable to the auditoriums, gymnasiums, and cafeterias, the ability to "share" those costs with other community organizations, who will also use the facilities, obviously presents a possible option for reducing the school districts' construction costs.[74]

With all of these varied benefits available to community-scale schools, an obvious question arises: Why don't school districts prioritize these types of schools? While in some cases it may be attributable to a lack of information, more likely than not, the small number of community-scale schools results from a host of laws and regulations that make such schools a difficult, if not impossible, option. The next section examines why.

III. THE LAWS THAT PROMOTE UNSUSTAINABLE, SPRAWL SCHOOLS

With the numerous benefits resulting from community-scale schools, one would anticipate that school districts would prioritize this model. However, even if a school district wished to do so, the district's ability to implement community-scale schools could be thwarted by a variety of state laws and regulations that serve as legal hurdles to the implementation of such schools. The following section surveys several categories of these laws.

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71. For further examples of school/community partnerships, see JOE NATHAN & KAREN FEBEY, NAT'L CLEARINGHOUSE FOR EDUC. FACILITIES, SMALLER, SAFER, SANER SCHOOLS, *available at* http://www.edfacilities.org/pubs/saneschools.pdf (last visited Sept. 26, 2006) (on file with the *McGeorge Law Review*).

72. For a discussion regarding this project, see *Historic Schools Success Stories*, NAT'L TRUST FOR HISTORIC PRES., http://www.nationaltrust.org/issues/schools/success/PrattSchool_MN.pdf (last visited Sept. 6, 2006) (on file with the *McGeorge Law Review*).

73. N.J. SCHOOLS CONSTR. CORP., COMMUNITY SCHOOLS 3-4, *available at* http://www.njscc.com/CommunitySchools/pdfs/CommunitySchools.pdf (on file with the *McGeorge Law Review*).

74. Garber et al., *supra* note 30, at 8.

A. *Minimum Acreage Laws*

If state law mandates that a school site be composed of a large amount of acreage, the ability to construct new schools in existing neighborhoods becomes extremely difficult since land is generally more scarce within developed areas. As a result, high acreage requirements serve to force new schools out of existing communities and onto the sprawling peripheral edge.

Currently, over twenty-five states have enacted minimum acreage standards for school siting.[75] Many of these laws are based upon previous recommendations by the Council of Educational Facility Planners ("CEFPI"), an industry organization that proposes guidelines for various issues related to the built environment of schools.[76] While CEFPI has recently backed away from large minimum acreage standards, the organization's previous recommendations generally called for the following:

> Elementary Schools: 10 acres plus 1 acre for every 100 students;
> Junior High and Middle Schools: 20 acres plus 1 acre for every 100 students;
> Senior High Schools: 30 acres plus 1 acre for every 100 students.[77]

While not all states have adopted these specific standards, many have used them as a framework. For example, Alabama's State Board of Education has adopted regulations that require elementary schools to have five acres plus an additional acre for every 100 students, middle schools to have ten acres plus an additional acre for every 100 students, high schools to have thirty acres plus an additional acre for every 100 students, and vocational schools to have a minimum of ten acres.[78] These types of standards, while lower than the historical CEFPI standards, still make building neighborhood-based schools almost impossible since very few existing neighborhoods can be found that have five, much less thirty, undeveloped acres within their area.

As a result, under these regulations, even if a school district in Alabama wanted to build a community-scale school, finding a neighborhood-based site with the sufficient amount of available acreage to satisfy state regulations could force the school to locate on the peripheral fringes where unused contiguous acres are more readily available. Even more troubling is the fact that, since these regulations simply establish a minimum number of required acres, school districts may build much larger schools than required because these type of regulations generally do not provide a maximum acreage cap in addition to their minimum acreage floor.[79]

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75. Janice Weihs, *School Site Size-How Many Acres are Necessary?*, CEFPI ISSUETRAK, Sept. 2003, http://www.cefpi.org/pdf/state_guidelines.pdf (on file with the *McGeorge Law Review*).

76. *Id.* at 1.

77. *Id.*

78. ALA. ADMIN. CODE r. 290-2-2-.04 (2006).

79. Some states such as Maine have adopted maximum site sizes as a bookend to their minimum site

In fact, in Alaska, not only are the over-sized CEFPI regulations used to calculate school site sizes, but schools that actually exceed those standards receive a higher ranking under Alaska's school site ranking system.[80] Clearly, this type of school site planning serves as a major legal hurdle to community-scale schools.

B. *Minimum Number of Students*

In addition to mandating a minimum on the number of acres for school sites, some states have also passed regulations requiring a minimum number of students per school. In some cases, schools are permitted to go below the minimum, but doing so then limits the amount of state funding for which they are eligible. This means that if a school wishes to operate with fewer than the minimum number of required students, it must forgo some or all state funding. This is obviously a very undesirable, if not impossible, option for most school districts.

Whether this type of legislation acts as an absolute minimum number of students or as a minimum tied to funding, the result is that it often mandates large schools not only by physical size regulations but also by requiring super-sized student bodies that can be serviced only by large-sized facilities. An example of such a requirement can be found in Kentucky's School Facilities Construction Commission's operating regulations, which provide:

> For a new facility to be constructed or an existing facility to be renovated, it shall have a minimum of the following number of students in order to receive full funding:
>
> Elementary - 300 Students
> Middle - 400 Students
> High - 500 Students[81]

Alabama state law also requires a minimum number of students per school ranging from a minimum of 140 students for a K-6th grade school to a minimum of 240 students for a 9th-12th grade high school.[82] While these minimum levels could be conducive to community-scale school populations, the regulations also do not contain maximum student totals. Thus, while prohibiting a K-6th

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sizes. *See* ME. STATE BD. OF EDUC., ME. DEP'T OF EDUC., RULES FOR MAJOR CAPITAL SCHOOL CONSTRUCTION PROJECTS, 05-071, Ch. 61, § 7, *available at* http://www.maine.gov/sos/cec/rules/05/071/071c061.doc (on file with *McGeorge Law Review*); *see also infra* Part IV.

80. ALASKA DEP'T OF EDUC., SITE SELECTION CRITERIA AND EVALUATION HANDBOOK 5 (1997 Ed). Stranger still, while incentivizing larger school sizes, Alaska also provides a higher ranking to schools in closer proximity to its students. *Id.* Meaning that, when selecting a school site, a school district must comply with clearly self-contradictory criteria and is essentially pushed to select a large acreage site that is near students.

81. 702 KY. ADMIN. REGS. 1:001 (2004).

82. ALA. ADMIN. CODE r. 290-2-2.03 (2006).

elementary school with less than 140 students, the regulation does nothing to prevent the same school from having many times more than that number of students.

The real world effect of such regulations is to discourage the renovation of community-scale schools. For example, in Durham, North Carolina, efforts to renovate the 1920s-era George Watts Elementary encountered roadblocks in the form of state regulations for minimum acreage standards, minimum student populations, and minimum square foot per student guidelines.[83] In that case, the elementary school occupied a four-acre site when guidelines called for roughly fourteen acres, totaled 360 students when guidelines called for at least 450, and failed to meet the 145 square foot per student amount that was contemplated by the guidelines.[84]

Fortunately, because of strong local support, the community was able to overcome these deficiencies and, in the end, successfully campaigned for the renovation of George Watts Elementary.[85] Though this story ended up being a success story, the default state guidelines for minimum students and minimum square footage per student served as regulatory hurdles that could have easily derailed efforts to rehabilitate this long-standing community-based school.

C. *Funding Formulas*

Another type of state regulation that has promoted the growth of sprawl schools involves funding restrictions for school renovation. These regulations essentially provide that, if the cost of renovating a school exceeds a certain percentage of the cost it would take to build a new facility, then the school district must build the new facility or, in some cases, lose state funding for the project.

For example, in Ohio, the School Facilities Commission has passed a regulation that sets the renovation/replacement cost percentage at sixty-six percent.[86] This means that if the cost of renovating a school exceeds sixty-six percent of the cost for building a new one, then state funding will only be provided for the new one. The application of this formula would result in prohibiting the renovation of a school that cost seven million dollars if a new school could be built for ten million dollars, despite the obvious fact that the school district would, under this approach, require three million dollars of additional funding upfront.

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83. SALVESON & HERVEY, *supra* note 21, at 11.

84. *Id.*

85. *Id.*

86. *See* OHIO SCH. FACILITIES COMM'N, OHIO SCHOOL FACILITIES COMMISSION DESIGN MANUAL (2001) (on file with author); *see also* Pamela Schel, *OSFC Must Mesh School Facilities with Past, Present,* MOUNT VERNON NEWS, Sept. 22, 2004, *available at* http://www.mountvernonnews.com/local/092204/osfc.html (on file with the *McGeorge Law Review*).

In California, the state's willingness to fund a school rehabilitation project is similarly limited to a percentage of the replacement cost:

> A district may apply for the rehabilitation of facilities that the [Board] has determined are an imminent health and safety risk to the pupils, if the cost/benefit analysis to mitigate the problem and remain in the building is less than 50 percent of the current replacement cost.[87]

States such as Minnesota have also implemented mandatory funding biases and others such as Delaware and Virginia have adopted such biases on an advisory basis.[88]

As if such hurdles alone were not enough, even when attempting to satisfy one of these funding rules, the deck is still stacked against renovation because school boards often do not consider all of the costs attendant to new construction when making their calculation. For instance, constructing a new school generally includes costs beyond the actual building itself, such as the expense of new roads, new utility infrastructure, and increased busing costs.[89] At the same time, the renovation of an existing neighborhood school frequently does not require these costs as the school can use the existing roads and infrastructure.[90]

Yet, when calculating whether the cost of renovation exceeds the permissible percentage, not a single state includes the increased infrastructure and busing costs into the overall cost of a replacement facility. Ultimately, funding formulas that encourage, if not mandate, new school construction over existing school renovation serve to promote sprawl schools by eliminating the feasibility of siting schools within an existing walkable built environment.

D. Exempting Schools from Zoning and Planning Regulations

Several states exempt schools from local zoning and planning regulations. For example, in California, state law provides: "The governing board of a school district . . . by a vote of two-thirds of its members, may render a city or county zoning ordinance inapplicable to a proposed use of property by the school district."[91]

In Michigan, state law exempts school siting from local zoning regulations

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87. CAL. OFFICE OF PUB. SCH. CONSTR., SCHOOL FACILITY PROGRAM HANDBOOK 57 (2006), *available at* http://www.documents.dgs.ca.gov/opsc/Publications/Handbooks/SFP_Hdbk.pdf (on file with the *McGeorge Law Review*).

88. CONSTANCE BEAUMONT, NAT'L TRUST FOR HISTORIC PRES., STATE POLICIES AND SCHOOL FACILITIES; HOW STATES CAN SUPPORT OR UNDERMINE NEIGHBORHOOD SCHOOLS AND COMMUNITY PRESERVATION 16-17 (May 2003), *available at* http://www.nationaltrust.org/issues/schools/schools_state_policies.pdf (on file with the *McGeorge Law Review*).

89. LAWRENCE ET AL., *supra* note 22, at 6.

90. *Id.*

91. CAL. GOV'T CODE § 53094(b) (West 2002). It is worth noting that this statute limits the exemption to school facilities and not to other "non-classroom facilities." *Id.*

and gives the state school superintendent exclusive jurisdiction over site selection.[92] This exemption allows the superintendent to disregard local regulations related to issues like parking, building setbacks, storm water control, and tree ordinances.[93] Likewise, the law exempts school siting from local historic district regulations.[94]

Massachusetts also exempts educational facilities from local zoning ordinances: "No zoning ordinance or by-law shall . . . prohibit, regulate or restrict the use of land or structures for religious purposes **or for educational purposes** on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic . . . ."[95]

The problem with these types of laws is pretty straightforward: exempting school districts from local zoning and planning regulations can promote peripheral, sprawl schools—either intentionally or by effect—because it removes their physical siting from the local governing body's overall local land use and development plan. This, in turn, can lead to major growth pattern problems if a school district decides to build a school on land that the municipality's plan had designated for another use or possibly even for no use at all (if the plan calls for that land to be conserved). By exempting school districts from local zoning and planning regulations, state law essentially allows school districts to disregard a community's long-range planning and build wherever it chooses to do so, regardless of potentially harmful or inconsistent infrastructure or land use issues.

IV. LEGAL SOLUTIONS FOR SUSTAINABLE SCHOOLS

If large, isolated schools present an unsustainable model—and if today's laws and regulations promote this model—then the obvious first step in solving this problem is to repeal these laws and replace them with regulations that prioritize sustainable, neighborhood-based schools. Fortunately, several states have begun to do exactly that.

In 2000, Florida took a very straightforward approach and passed legislation that specifically prioritizes small schools by setting maximum student numbers

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92. MICH. COMP. LAWS ANN. § 380.1263 (West 2005).

93. Schulz v. Northville Pub. Schs., 635 N.W.2d 508, 510 (Mich. Ct. App. 2001). On appeal, the Michigan Supreme Court upheld the rulings of the lower courts, which found that school siting is exempt from local zoning regulations. Charter Twp. of Northville v. Northville Pub. Schs., 666 N.W.2d 213, 216 (Mich. 2003). "We determine that the statute here is unambiguous. It grants sole and exclusive jurisdiction to the state superintendent to review and approve plans and specifications of school buildings and site plans for those buildings. Thus, what the state superintendent approves is immune from the provisions of local zoning ordinances." *Id.*

94. *See* Mich. Op. Att'y Gen. 6957 (1997-1998). "It is my opinion, therefore, that a local school district is not required to obtain a permit under the Local Historic Districts Act before commencing work affecting the exterior appearance of a school building located within a local historic district." *Id.* at 4.

95. MASS. GEN. LAWS ch. 40A, § 3 (2006) (emphasis added). It is worth noting that, even with this exemption, the law does provide that schools remain subject to some issues related to zoning, including the bulk and height of structures, yard sizes, lot area, setbacks, open space, parking, and building coverage. *Id.*

based on the type of school.[96] For example, under Florida's "Small School Requirements," elementary schools cannot exceed 500 students, middle schools cannot exceed 700 students, and high schools cannot exceed 900 students.[97] Moreover, the statute further provides that "all plans for new educational facilities to be constructed within a school district . . . shall be plans for small schools in order to promote increased learning and more effective use of school facilities."[98]

While Florida adopted the approach of prioritizing small-sized schools as a matter of general state policy, other states have also taken steps to promote community-scale schools, albeit in a somewhat less direct manner. The following section examines several of these regulatory solutions.

A. *Revising School Site Acreage Standards*

A major hurdle to designing and building community-scale schools is when a state requires that school sites contain excessive acreage amounts, the effect of which is to preclude schools from being situated within a neighborhood context. This can occur both by requiring excessive minimum acreage totals and by permitting the same by omission.

1. *Eliminating or Reducing Minimum Acreage and Student Standards*

One obvious step to combat this result is to repeal excessive minimum acreage and student body size laws. Maryland has taken this step.[99] Its decision was in response to the fact that the city of Baltimore discovered that, under the existing minimum acreage requirements, it would have great difficulty building new schools because it was rare to find available large acre sites in the heavily built out city.[100]

Alternatively, Indiana has taken an approach where it exempts historic schools from otherwise applicable minimum acreage standards.[101] In both cases, the states' actions preserved the ability to build small schools within a neighborhood scale rather than super-sized schools on the undeveloped fringes.

States such as New York, Florida, and New Hampshire have taken a different approach and retained minimum acreage standards but kept them low enough to allow for small schools,[102] thus demonstrating that such changes can be incrementally adopted if necessary. This approach, while not ideal, may present a

96. FLA. STAT. ANN. § 235.2157 (2000).
97. *Id.*
98. *Id.*
99. BEAUMONT & PIANCA, *supra* note 2, at 40.
100. *Id.*
101. *Id.* at 41.
102. *Id.* at 40.

more politically palatable option for enabling small, community-scale schools as a matter of right.

2. *Adopting Maximum Acreage or Size Standards*

While each of the above laws contemplate the elimination of sprawl-oriented schools by permitting lower minimum acreage school sites, simply eliminating the bad does not necessarily guarantee the good. Regulatory changes should further be designed to mandate, rather than simply allow, improved results. One such option is that, after eliminating minimum acreage standards, the governing bodies should adopt maximum acreage standards.

Under this approach, states would act in the affirmative to mandate the maximum number of acres that can be used for a school site. Doing so would more likely result in sustainable school growth patterns because, even when a minimum acreage standard is eliminated, that approach still permits large schools by not capping their potential size. Maine has adopted a variation of this approach by refusing to approve new school sites that exceed maximum acreage standards approved by the state.[103]

However, if the maximum is set too high, then it will not serve to require community-scale schools. For example, under Maine law, to receive site approval from the state board of education, elementary schools must have a minimum acreage of five useable acres plus another useable acre for every additional 100 students and a maximum of twenty useable acres plus another useable acre for every additional 100 students.[104] Thus, even though Maine has a maximum acreage cap at twenty acres, that high cap hardly serves to mandate community-scale schools.

An alternative approach is to entirely abandon minimum standards and replace them with community-scale maximum standards that govern school size within a standard range. For example, Wyoming requires that the gross square footage per student (GSFPS) for an elementary school fall within a 90 to 120 GSFPS range, a middle school within 120 to 150 GSFPS, and a high school within 150 to 180 GSFPS.[105] Again though, if the range permits an excessively high cap, then the law may *permit* community-scale schools but not *require* them. Still, if the range is carefully structured with a low maximum size that promotes community-scale schools, then this approach can be effective.

Finally, an additional issue when considering maximum site sizes may be how to fit all the typical school facilities—ranging from auditoriums to sports fields to swimming pools—onto a small site. To address this concern, states may pass regulations incentivizing the dual use of such facilities. For example, an

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103. SCHOOLS FOR SUCCESSFUL COMMUNITIES, *supra* note 8, at 29.

104. ME. STATE BD. OF EDUC., *supra* note 79.

105. SCH. CAPITAL CONSTR. COMM., WYO. STATE LEGIS., RULES FOR SITE SELECTION AND SCHOOL CONSTRUCTION FOR WYOMING PUBLIC SCHOOL BUILDINGS, Ch. 17, § 7(a)-(c) (1997).

Arizona policy statement provides that "[d]istricts should give careful consideration to joint-use sites such as those which adjoin community parks and play grounds."[106] If such a provision were codified, it could be structured so as to provide a school district increased funding if a school site is selected that is able to use an adjacent park for its recess and playing fields, thus eliminating the need for additional acreage that would be needed for its own outdoor facilities.[107]

B. *Adopting School Funding Strategies that Promote Community-Based Schools*

1. *Eliminating Sprawl-Oriented Funding Formulas*

Some states have addressed the unsustainable development patterns of contemporary schools by eliminating the funding formulas that prioritize the building of new schools over renovating existing—and often neighborhood-based—schools. States accomplish this through a variety of approaches. For example, Massachusetts has established a system that encourages school districts to properly maintain their existing schools by affording increased state funding to districts that do so.[108]

Alternatively, Maryland has adopted an approach where state funding for existing schools is prioritized over state funding for new schools; as a result, Maryland distributes over seventy-five percent of its school construction funding to existing schools.[109] In Pennsylvania, the state has eliminated its regulation that restricted state construction funding to only those instances where the renovation cost would be less than sixty percent of the cost of building a new school.[110]

2. *Providing Direct Financial Backing for Community-Based Schools*

In addition to revising construction-funding formulas that prioritize new schools over renovated schools, the federal government and several state governments have implemented a variety of regulatory programs that provide direct financial backing for community-based schools. For example, federal transportation funds represent a potential funding tool for encouraging walkable schools. This occurred in California where the state implemented a program that uses federal funds to establish bike and walking paths, new crosswalks, and

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106. STATE OF ARIZ., SCHOOL FACILITIES BOARD POLICY BOOK § 4, *available at* http://www.azsfb.gov/sfb/rules%20&%20policies/IV%20Land.pdf (last visited Oct. 3, 2006) (on file with the *McGeorge Law Review*).

107. Massachusetts has adopted regulations that, while not mandating, still require school districts to consider a school site's "[p]roximity to other facilities such as libraries, museums, parks, natural resources, nature study areas, and business" prior to selecting the site. 603 MASS. CODE REGS. tit. 38, § 04.

108. BEAUMONT & PIANCA, *supra* note 2, at 43.

109. *Id.*

110. *Id.* at 44. While Pennsylvania has taken this progressive step of eliminating uneven funding formulas, it has still retained sprawl-inducing minimum acreage standards. *Id.*

traffic calming devices near schools.[111] Termed the Safe Routes to School Project, the program provides local governments with direct access to Federal TEA-21 transportation funds from the Hazard Elimination/Safety Initiative administered by California's transportation department.[112]

Through these funds, California sought to both encourage walking and biking to school by creating a safer environment for students and to discourage excessive driving trips to school because of the congestion problems that it created for California thoroughfares.[113] Significantly, several other states have introduced legislation seeking to replicate this dual-purpose program.[114]

Wisconsin has adopted a state program aimed at facilitating the construction of community-scale schools. Known as the Neighborhood Schools Initiative (NSI), the Wisconsin Legislature established this program in 1999 for use by the Milwaukee Public Schools System.[115] Under the NSI, the Legislature required that the Milwaukee Public Schools System develop a neighborhood schools plan, hold public hearings on the plan, and then submit a final report on the plan to the Legislature.[116] The NSI also permits the Milwaukee Redevelopment Authority to issue up to $170 million in state-guaranteed bonds for the construction or renovation of schools under the neighborhood plan.[117]

Obviously, this type of direct state financial backing for community-scale schools from the state level serves as a strong incentive to develop the same at the local level.

Another state program designed to facilitate community-based schools is the Achievement Plus Initiative in Minnesota. Rather than focusing on siting issues, the program enhances the viability of community-based schools by promoting their co-located use with other community efforts.[118] According to their mission statement, "Achievement Plus schools and their neighborhoods have significant interactions and provide extensive support to each other."[119] The statement further provides that "the schools are designed and operated to maximize parent and community involvement" and "serve as the hub of community life and as such, should host on a temporary and permanent basis a variety of partner and

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111. Cal. Surface Transp. Policy Project, http://www.transact.org/ca/saferoutes_bill.htm (on file with the *McGeorge Law Review*).

112. *Id.*

113. *Id.*

114. *Id.* The success of this type program is evidenced on the state level (where New Mexico has recently authorized a similar program), the federal level (where efforts to establish a national program are being evaluated), and even internationally. *See* Cal. Surface Transp. Policy Project, *California Safe Routes to School Reauthorization*, http://www.transact.org/ca/safe_routes.pdf (on file with the *McGeorge Law Review*).

115. WIS. LEG. REFERENCE BUREAU, BUDGET BRIEF 99-18 1 (1999), *available at* www.legis.state.wi.us/lrb/pubs/budbriefs/99bb18.pdf (on file with the *McGeorge Law Review*).

116. *Id.* at 2.

117. *Id.*

118. *See* ACHIEVEMENT PLUS SCHOOLS MISSION STATEMENT (2004), *available at* http://www.Communityschools.org/Toolkit/AchievementPlus-Overview.doc?pid=7421) (on file with the *McGeorge Law Review*).

119. *Id.*

community organizations."[120]

Significantly though, this program does not serve as a perfect example of state support for community-scale schools. For instance, as with the Neighborhood Schools Initiative in Wisconsin, the Achievement Plus Initiative is operated essentially as a pilot project within the St. Paul area.[121] Thus, the scope of its benefit is extremely limited. Also, while professing interest in the community-scale of schooling, the program has not incorporated any maximum acreage provisions or other strategies designed to limit the footprint of the Achievement Plus schools. Still, the initiative represents an example of state funding directed to enhance the viability of neighborhood-based schools.

One of the more "big picture" state initiatives aimed at promoting community-scale schools is the New Jersey School Renaissance Zone (SRZ) program. Structured as a public-private partnership, the SRZ is a joint effort involving a variety of New Jersey state agencies the goal of which is to "streamline construction of high quality facilities in coordination with local redevelopment projects."[122] Though it too is structured as a pilot program,[123] a unique aspect of this program is that its overriding goal is to use the building of schools as an economic development tool for New Jersey communities.[124] The SRZ initiative is designed to "spur private economic development and revitalization in the neighborhoods around schools" and serve as a complementary tool for New Jersey's smart growth goals.[125] Thus, while it does not specifically provide for community-scale school projects, nor does it prioritize renovation projects, this initiative does promote school projects that embrace sustainable growth patterns, as evidenced by its stated goals: to encourage reinvestment in neighborhoods surrounding new schools, revitalize existing physical assets of the neighborhood, encourage infill development, promote civic engagement in issues important to the neighborhood, and preserve the states' and districts' multi-million dollar investment in new schools.[126]

In Vermont, the Legislature demonstrated a commitment to directly supporting small schools by funding Small School Support Grants through the

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120. *Id.* Under this initiative, a local YMCA serves as one of the permanent dual use partners as it operates its programs at one of the Achievement Plus facilities. *Id.*

121. *Id.*

122. N.J. SCHS. CONSTR. CORP., COMMUNITY SCHOOLS 14, *available at* http://www.njscc.com/CommunitySchools/PDFs/CommunitySchools.pdf (last visited Oct. 3, 2006) (on file with the *McGeorge Law Review*). The New Jersey state agencies involved in the program include the New Jersey Economic Development Authority (co-coordinating agency), the New Jersey Department of Community Affairs (co-coordinating agency), New Jersey School Construction Corporation, New Jersey Housing and Mortgage Finance Agency, New Jersey Department of Environmental Protection, New Jersey Department of Human Services, and the New Jersey Department of Education. *Id.* at 15.

123. *Id.* at 17.

124. *Id.* at 14.

125. *Id.*

126. *Id.* at 14, 15.

state's education department.[127] These grants are designed to supplement the financial viability of community-scale schools:

> Small school districts operating at least one school are eligible for a small schools support grant if the two-year average enrollment is less than 100 or if the average grade size is 20 or fewer. Districts receiving a support grant are also eligible for a small schools financial stability grant if there is a 10% decrease in the two-year average enrollment in any one year.[128]

As is apparent, there are a variety of funding strategies that states can implement to promote community-scale schools or, at the very least, place them on an even playing field with large-sized schools.

C. Requiring School Districts to Comply With Local Zoning and Planning Laws

An additional legal solution to promoting community-scale schools would be to require all school districts to comply with existing zoning and planning regulations. This would provide a safeguard against school siting decisions that are inconsistent with a municipality's land use plan and growth patterns.[129] Two obvious approaches exist to accomplishing this solution: 1) repeal existing laws that exempt school districts from local zoning and planning regulations or 2) pass new laws (or revise existing laws) that specifically require school districts to conform to local zoning and planning regulations.

1. Repealing Existing Laws that Exempt School Districts from Local Zoning and Planning Regulations

By repealing laws that exempt school districts from local zoning laws, a state legislature can ensure that school siting decisions do not contradict a municipality's master land plan. Several states are taking steps in this direction.

In California, legislators have previously introduced bills that would require that, when a municipality has a comprehensive plan, the local school district must comport with local zoning and planning regulations.[130] Significantly, this bill has received the support of important interest groups such as the California Farm

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127. LAWRENCE ET AL., *supra* note 22, at 7.

128. VT. STATE BD. OF EDUC., SCHOOL DATA & REPORTS, SMALL SCHOOLS SUPPORT GRANTS, *available at* http://www.state.vt.us/educ/new/html/data/small_schools.html (on file with the *McGeorge Law Review*).

129. However, if the underlying land use plan and growth patterns are themselves sprawl-oriented, then this solution offers limited help.

130. NAT'L TRUST FOR HISTORIC PRES., ADVOCATE BETTER POLICIES, PRESERVATION ADVOCATE NEWS, STATE AND LOCAL EDITION (2000) (on file with author).

Bureau and the League of California Cities.[131]

In Michigan, legislators have introduced a bill that, while not completely removing the school district exemption from zoning, would provide additional procedures aimed at bringing school siting decisions into conformance with local zoning and planning laws.[132] The bill would require that school districts submit building proposals to the local zoning board, which would be given authority to either approve the plan or propose revisions.[133] If the zoning board proposes revisions, then the school district must either make the revisions or provide a written explanation regarding why it cannot adopt the revisions.[134] However, even though the bill represents a helpful step toward coordinating school siting with local land use plans, it does not provide a complete safeguard because "the state superintendent of public instruction would still have the final say on approving site plans."[135] If the political realities do not permit completely repealing school site exemptions, the proposed Michigan bill provides a framework for incremental improvement on this issue.

2. *Passing New Laws (or Revising Existing Laws) that Specifically Require School Districts to Conform to Local Zoning and Planning Regulations*

While the absence of a specific law exempting school districts from local zoning and planning laws might seem sufficient to require school districts to comport with such laws when making school siting decisions, the issue may not be so clear cut. For example, New Mexico does not have a law expressly exempting school districts from local zoning. However, this did not prevent attempts to find such an exemption under existing law.

In 2005, the Attorney General was asked to opine whether such an exemption could be derived from existing law.[136] Fortunately, the Attorney General concluded that school districts are not exempt from local zoning and planning regulations because the New Mexico Legislature has not specifically provided for such an exemption.[137]

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131. *Id.* Such a bill is also important because it would serve the purpose of encouraging municipalities to adopt comprehensive plans that would promote sustainable growth while protecting the interests of those on the urban fringe.

132. MICH. EDUC. REPORT, LEGISLATIVE ACTION (May 7, 2006), http://www.educationreport.org/pubs/mer/article.asp?ID=7628 (on file with the *McGeorge Law Review*).

133. *Id.*

134. *Id.*

135. *See* 2005 House Bill 5474, *available at* http://www.michiganvotes.org/2005-HB-5479 (on file with the *McGeorge Law Review*) (allowing for school site plan review).

136. Op. N.M. Att'y Gen. 05-03, *available at* http://www.ago.state.nm.us/divs/civil/opinions/o2005/07-07-05_school-owned_land.htm (on file with the *McGeorge Law Review*).

137. *Id.* at 1 ("In the absence of express legislative intent regarding a school district's immunity from local zoning regulations and upon balancing the interests of Los Alamos County in the orderly development of the community with the interests of the Los Alamos school board in developing a revenue stream for the benefit of Los Alamos schools, we believe that lands owned by the Los Alamos Public School District and used for

This situation represents an example where, even though an express exemption did not exist, interested parties still attempted to discern one. While an attorney general's office well-versed in statutory construction rules would likely reach a similar opinion as the New Mexico Attorney General's office, the most foolproof route—if even a scintilla of ambiguity may exist—would be to revise existing state school or zoning laws to make it clear that school districts are subject to local zoning and planning regulations.

D. Mandating Feasibility Reviews

Another legal tool for promoting community-scale schools would be for state laws to require that all proposed school projects undergo feasibility reviews. Under such a review, a school district proposing to build a new school must demonstrate that building a new school is a more economically feasible alternative to renovating an existing school or adaptively reusing an existing structure. To make such a determination, state law should require the school district to analyze all costs attendant to building a new greenfield school, not just the actual building cost. This would result in a more accurate reflection of the overall cost of a new school by focusing on infrastructure costs in addition to building costs. Indeed, several states currently require such an analysis.

1. Physical Infrastructure Costs

For example, Alaska has developed a ranking system for determining the suitability of proposed school sites.[138] This system establishes specific criteria that must be considered and weighed prior to selecting a school site. While the system is hardly perfect, three of the site criterion relate not only to the building costs, but also to the infrastructure costs that would be incurred in building the new school. These three are: the availability of water utilities, availability of sewage utilities, and availability of Electrical Power.[139]

In each instance, the ranking system assigns higher marks to proposed school sites where the necessary infrastructure exists, thus discouraging the selection of peripheral sites outside of the established infrastructure network.[140]

Mississippi also provides a list of criteria that guides school districts in the selection of a school site.[141] One of these requirements is that "[p]ublic utilities

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school purposes, directly and indirectly, may be subject to local zoning and development ordinances.").

138. ALASKA DEP'T OF EDUC., *supra* note 80.

139. *Id.* at 11-12.

140. *Id.*

141. MISS. DEP'T OF EDUC., EVALUATION OF PROPOSED NEW SCHOOL SITE 1, *available at* http://www.mde.k12.ms.us/lead/osos/webpage.htm#New%20School%20Sites (last visited Sept. 27, 2006) (on file with the *McGeorge Law Review*).

such as electric power, water, sewerage, telephone, fire protection and gas service are available to the site."[142]

Unfortunately, while encouraging school sites with existing infrastructure, neither of these standards mandates that new schools may only be built where infrastructure currently exists. Also, since many municipalities continue to respond to growth pressures by extending infrastructure to the sprawling periphery of their city limits, requiring existing infrastructure does not eliminate the possibility of a super-sized school. However, the strategy of linking school site approval to the presence of utility and road infrastructure can serve to potentially prevent a school site serving as a driving force for sprawl. Moreover, such a requirement, if coupled with community-scale maximum acreage standard, can be used to ensure that any new school sites would be limited to small acreage sites for which infrastructure is currently in place.[143]

2. *Physical Building Costs*

As part of a mandated feasibility study, state law should also require school districts to obtain anticipated cost estimates from contractors other than those hired to work on a project. State law should also require these estimates to be in writing and available for public review. Doing so would help avoid situations similar to those in Kokomo, Indiana and Columbus, Ohio, where decisions to build new schools, rather than renovate existing ones, were based on inaccurate—and even non-existent—information related to the costs of renovating existing schools versus building new ones.

For example, in Kokomo, the school district initially concluded that renovating a historic neighborhood school would cost at least thirteen million dollars more than building a new school.[144] However, when pressed to provide evidence supporting this figure, the school district was unable to do so.[145] Indeed, following an independent cost estimate, it was ultimately determined that

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142. *Id.*

143. Connecticut also requires that, to be eligible for certain funding, the proposed school site:

> [S]hall be approved by the Commissioner in accordance with criteria which consider at least (1) The location and size of the project in relation to existing school facilities; (2) the adequacy and availability of utility services, including water, sanitary sewers, electricity and fire services; (3) the engineering, size, and shape adequacy of the site to support the school facilities; (4) compliance with zoning, wetlands, environmental protection and other laws and regulations; (5) demographic factors and population trends; (6) accessibility to the site; (7) the cost of acquiring, developing, maintaining and transporting pupils to the site; and (8) the availability of other sites.

CONN. DEP'T OF EDUC., DIV. OF GRANTS MGMT., SCHOOL CONSTRUCTION PROJECTS: GENERAL DISCUSSION OF GRANT ELIGIBILITY, *available at* http://www.state.ct.us/sde/dgm/sfu/Guide02/menus.htm (last visited Sept. 26, 2006) (on file with the *McGeorge Law Review*).

144. BEAUMONT & PIANCA, *supra* note 2, at 33.

145. *Id.*

renovating the school would cost only four million dollars.[146] In this case, Kokomo was fortunate that the school district agreed to the second cost estimate since there was no legal requirement for them to do so. Similarly, in Columbus, Ohio a group of architectural and engineering consultants conducted a feasibility study that concluded that renovating ten historic schools in the community would end up costing thirteen million dollars less than building ten new ones.[147]

Both of these examples demonstrate the importance of state laws that mandate a full and accurate analysis of the overall costs attendant to building new schools as compared to renovating existing schools or adaptively reusing other structures. In addition, they emphasize the need for independent and empirical written cost comparisons between these options. Doing so will allow decision makers to be accurately informed in terms of options and costs that fall outside the scope of the costs of the actual school building, such as new infrastructural needs.[148]

V. CONCLUSION

Studies continue to demonstrate that community-scale schools—those that promote walkability and bikeability while doubling as a neighborhood resource—provide a variety of important benefits for students, parents, and the community as a whole. Yet, numerous state and local regulations continue to present legal hurdles to realizing these benefits. Fortunately, as communities become aware of these benefits, there appears to be a greater interest in revising the laws and regulations that, in many cases, essentially prohibit community-scale schools.

As set forth in this article, the challenges are numerous and diverse. However, even short of a complete regulatory overhaul (which is likely the most profound but politically infeasible solution at this time) solutions exist that, if implemented, can remove the hurdles that stand in the way of community-scale schools and the numerous benefits that such schools provide.

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146. *Id.* Earlier estimates had placed the total cost between twenty to twenty-four million dollars. *Id.*

147. BARBARA MCCANN & CONSTANCE BEAUMONT, *BUILD SMART*, AM. SCHOOL BD. J., 3 (2003), *available at* http://www.smartgrowthamerica.com/SGA%20School%20Sprawl.pdf (on file with the *McGeorge Law Review*).

148. Connecticut has adopted another approach toward considering the feasibility of a school site by requiring that most school projects be subject to a "design conference" prior to funding (though the same law provides an easy mechanism for the waiving of this conference). *See* CONN. GEN. STAT. § 10-287c-11 (2005). If properly structured, such a conference could include considerations ranging from feasibility reviews to alternatives such as renovation or adaptive reuse. *Id.*

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